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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

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SHARLENE GREENE,

Plaintiff,

No. C 08-3986 PJH (PR)

v.

ALAMEDA COUNTY JAIL and SANTA
RITA JAIL PRISON HEALTH SERVICE,

Defendants.

**ORDER DISMISSING
COMPLAINT WITH LEAVE
TO AMEND**

Plaintiff, an inmate at the Alameda County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. She has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only ""give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.\"" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations

1 omitted). Although in order to state a claim a complaint "does not need detailed factual
2 allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief'
3 requires more than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
5 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65
6 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief
7 that is plausible on its face." *Id.* at 1974.

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
9 elements: (1) that a right secured by the Constitution or laws of the United States was
10 violated, and (2) that the alleged deprivation was committed by a person acting under the
11 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

12 **B. Legal Claims**

13 Plaintiff alleges that a lump was discovered in her left breast. She was taken to
14 the nurse's office, where it was determined that her blood pressure was high and
15 that she had a slight fever. Without a mammogram or x-ray being taken, Dr.
16 Aramburo decided to lance the lump, which he proceeded to do without having her
17 sign a consent form. She resisted but was unable to stop him. He did not provide
18 an explanation, anesthetic, or pain pills. She alleges that she was in excruciating
19 pain "as I am now." She says that no "culture" – perhaps she means biopsy – was
20 done, and that she was denied a replacement for her dirty uniform shirt. She does
21 not say whether the wound was bandaged.

22 The part of the caption in which plaintiff names the intended defendants reads:
23 "Alameda County Jail[;] Santa Rita Jail Prison Health Svcs.[;] 5325 Broder Blvd.[;]
24 Dublin, Ca 94568." On pages two and three of the form complaint, where she is
25 asked to write the names and addresses of the defendants, she has written:
26 "Alameda County sheriff's Dept, Santa Rita Co. jail." That is, different defendants
27 are listed, so it is not possible to tell who she intended to be defendants. The
28 complaint must be dismissed with leave to amend to remedy this.

1 In amending, plaintiff should keep in mind that a jail is not a suable entity, but
2 it may be that the governmental agency that runs the jail can be sued if it is alleged
3 that the constitutional violations were the product of a policy or custom of that agency. See
4 *Shaw v. Cal. Dep't of Alcoholic Beverage Control*, 788 F.2d 600, 604-05 & n.1, 610-11 (9th
5 Cir. 1986) (police department of a city and the sheriffs department of a county are public
6 entities under California law and therefore may be sued in federal court); see also *Brewster*
7 *v. Shasta County*, 275 F.3d 803, 812 (9th Cir. 2001) (California county sheriff's department
8 acts for county rather than state when investigating crime, thus county may be subject to §
9 1983 liability). And of course individuals can be sued for violating constitutional rights. See
10 *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). In the amendment plaintiff must make
11 clear exactly which defendants she intends to name, and she must say where the
12 defendants can be served if the case is allowed to proceed.

CONCLUSION

14 1. The complaint is **DISMISSED** with leave to amend within thirty days of the date
15 this order is entered. If plaintiff does not amend, the case will be dismissed with prejudice
16 for failure to state a claim. The amendment must be on the form for prisoner section 1983
17 suits and plaintiff must write "Amended Complaint" on the first page and must supply the
18 number of this case, No. C 08-3986 PJH (PR), in the appropriate place on the first page.
19 This is so the amendment is not mistaken for an attempt to file a new case.

20 2. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
21 informed of any change of address by filing a separate paper with the clerk headed "Notice
22 of Change of Address." She also must comply with the court's orders in a timely fashion.
23 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
24 Federal Rule of Civil Procedure 41(b).

25 || IT IS SO ORDERED.

26 || Dated: September 15, 2008.


PHYLLIS J. HAMILTON
United States District Judge

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United States District Court

For the Northern District of California

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